

Family Matters e-Newsletter



Amy Edwards

Family Law

313 West 2nd St. • Greenville NC

(252) 758-3430

www.AmyEdwardsFamilyLaw.com

NEWS FOR JULY 2015

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Veterans and Military Families in Divorce and Separation

By Amy A. Edwards

Beyond the usual issues in any separation or divorce, which can be stressful enough, military families have other special "layers" that apply. Family law statutes for child custody and support, alimony, divorce and property division are very specific and apply only in the state where they were written, with some exceptions. One exception is the federal law that applies to those serving in the military or those who are veterans, and their families.

State Law

North Carolina has number of unique state laws that apply to military families, such as the [Uniform Deployed Parents Custody and Visitation Act](#), as it is currently known. That law allows certain deploying parents to create out-of-court temporary agreements with the other parent that will be enforced by the court on a temporary basis while the parent is deployed. Approved topics include the frequency of communication with the deployed parent while deployed, the type of communication, such as Skype, and even the ability to permit visitation time to the family member of the parent or even an unrelated person.

Federal Law

Military families are also subject to special federal statutes, including laws that determine which state has jurisdiction, which is the court's authority to hear a case and enter court orders. Special federal laws control which state can divide retirement benefits, which may be different from the state that has the ability to divide the other marital assets. The [Servicemembers Civil Relief Act](#) adds unique protections for certain service members who are served with lawsuits.

Federal law creates requirements for how long a spouse or former spouse must be married to be eligible for certain military benefits, or when he or she must elect or decline benefits. The state can't change or override those rules. Besides base pay, there are allowances such as Basic Allowance for Subsistence (BAS), Basic Allowance for Housing (BAH), and various special incentive payments. Military pay and compensation is sometimes taxed, and sometimes not taxed. The IRS, another federal agency, devotes a [publication](#) to military families, and gives extensions of time to file tax returns in certain situations. In long-term marriages, when there is a divorce, spouses are entitled to [Tricare](#) when there are adequate years of service overlapping with years of marriage. GI Bill educational benefits are now transferable to spouses and children when the family meets eligibility requirements.

Military Bureaucracy

The military has independent regulations, which apply even if no lawsuit has been filed. For example, regulations require service members to voluntarily pay support to their families. Some rules apply to all branches of the military, but there are often different rules for the Army, Navy, Air Force, Marines, Reserve, National Guard, and National Oceanic and Atmospheric Administration (NOAA). There are also special rules for civilian employees, and those who have had both military and other federal employment. Rights are subject to change when the servicemember makes elections for benefits, such as converting

retirement to disability, or makes certain retirement elections, like the Career Status Bonus.

Amy A. Edwards is a family law attorney in Greenville, NC, certified by the NC State Bar Board of Legal Specialization as a Family Law Specialist, and is licensed only in NC. Laws change. This article is current as of July 2015.
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North Carolina is one of a handful of states that still recognizes legal claims for alienation of affections and criminal conversation. They are controversial and have been rejected and resurrected by the courts and the legislature for many years.

Airing Dirty Laundry: Alienation of Affections and Criminal Conversation Claims

By Amy A. Edwards

They are sometimes called *Heart Balm* cases for allegedly making the jilted spouse feel better by nursing a broken heart, and are filed by the husband or wife against a third party, not the other spouse.

Alienation of Affections

In alienation cases, the spouse sues the third party for alienating (*i.e.*,

stealing) the spouse and/or the love and affection that spouse once had for the plaintiff. He or she must prove, usually to a jury, the defendant wrongfully interfered in the marriage.

Another element of these claims is proving the other spouse had some genuine love and affection for him or her, and that the third party destroyed it. The spouse must also show the alienation of affection was caused by the wrongful and malicious acts of the third party. His or her actions must be a controlling cause, but need not be the only cause, for the lost affection. In most cases, the loss of affection is shown by a separation or divorce. These claims were once known as mother-in-law cases. This was because the spouse blamed the in-law for the decline of the marriage. Now these cases are usually filed against the person with whom the spouse is having an affair.

Criminal Conversation

Criminal conversation claims are much easier to prove because the only real element is proving the third party had intercourse with the spouse while married and before any separation of the spouses. There is no need to prove the spouse's affections were taken, or that there was genuine love and affection between the spouses.

Financial Damages

The spouse/plaintiff sues for financial damages. Besides loss of affection, examples of damages include compensation for the loss of consortium, loss of sexual relations exclusively with the spouse, fear of sexually transmitted disease, humiliation, shame, mental anguish, and disgrace resulting from the act. The end of a marriage may include a request for damages based on his or her loss of property by means of equitable distribution of marital property, and loss of support. There are also potential damages related to injury done to the spouse for pain and suffering, including physical reactions to the affair, such as anxiety and

depression.

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The ABCs of College Expenses in North Carolina

By Amy A. Edwards

First Things First. When Does Child Support End?

The age of majority in our state is age 18, and child support obligations generally end when a child reaches that age. There are several exceptions to that rule. Support ends when a child is emancipated (by marriage for example) before reaching age 18. If a child is 18 but has not yet graduated from school, support continues until the child graduates or ceases to attend school on a regular basis, fails to make satisfactory academic progress towards graduation, or reaches age 20, whichever comes first. The court does, however, have the ability to terminate support at age 18 before high school graduation if he or she deems it appropriate. See NC Gen. Stat. §50-13.4.

When Do College Expenses Begin?

They begin based only on parental agreements. Because child support obligations end at age 18 or graduation, the court has no ability to order continuing support (*i.e.*, college expenses). However, while there is no legal obligation for either parent to pay these expenses, they are free to enter into an agreement to address them. The agreement is frequently a separation agreement, which the court will enforce. When parents obligate themselves to be responsible for college expenses, the obligation is not only enforceable against the other parent. The obligation is enforceable by the child against one or both parents in the event a parent fails to abide by the agreement.

Considerations For Parents Negotiating College Expenses

- How are "college expenses" defined by the parents?
- Do the expenses include tuition, housing, books, transportation, insurance, etc.?
- Can the parents truly afford to pay for college?
- Will each parent be required to contribute a specific dollar amount, to be supplemented by the student taking on loans or working while in school?
- Are there restrictions on which university or college, usually related to either in-state rates in North Carolina or out-of-state rates?
- Will the same rules apply to all of the children?
- Will one parent pay or both share the cost?
- If both pay, what percentage of expenses will each parent pay?
- Should the parents contribute to a 529 College Savings Plan, or pay expenses directly?
- Does the agreement require the child to meet standards, such as earning a minimum GPA or living at home while in school?
- Are there limitations concerning anticipated degree programs, such as a two year degree or four year degree?

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What is Guardianship in North Carolina?

By Amy Edwards

What is a Guardian?

A guardian is a person, state agency or even a corporation, who is appointed by the court to manage someone's affairs when they are unable to do so for themselves. When an adult doesn't have the ability to make decisions for himself or herself because of advanced age, mental illness, injury, disease, or other condition, the court will have a trial to determine whether he or she is competent. If the court rules a person is incompetent, the court will appoint a guardian. Good estate planning can minimize the burdens and the cost of this process. The incompetent

person becomes a "ward" of the guardian, who is given the legal right to make decisions for the ward. Guardians are legally obligated to act only in the best interest of the ward. In North Carolina, there are mainly two types of guardianship for adults: guardianship of the person and guardianship of the estate. If a person has both types of guardianship, he or she has the legal title of "general guardian." There are variations of these laws when an adult is appointed as guardian of a minor.

Guardians of the Person

A person who is awarded guardian of the person (GOP) is legally obligated to make sure the ward is taken care of, and is entitled to physical custody of that person. GOPs have a legal duty to provide "for the ward's care, comfort, and maintenance, and shall, as appropriate to the ward's needs, arrange for the ward's training, education, employment, rehabilitation or habilitation." GOPs also have the right and obligation to consent to "receive medical, legal, psychological, or other professional care, counsel, treatment, or service." NC Gen. Stat. 35A-1241.

Guardians of the Estate

A person who is appointed as guardian of the estate (GOE) is legally obligated to make sure the assets, incomes and general finances of their ward are protected and managed properly. GOEs have very broad authority to do everything from paying bills to signing contracts and insuring assets. State law specifically mentions the right to continue the operation of farming and businesses. GOEs are usually required by law to file an [inventory of assets](#) followed by annual [accountings](#) of the assets and income.

Guardianship of Minors

For minors, GOPs are quite rare because a parent or other adult almost always has custody instead of guardianship. The court may appoint the

Director of a county department of social services (DSS) as the acting GOP if the child needs DSS services and he or she has no natural guardian, or the minor has been abandoned. The Director is relieved of this duty once the court appoints a permanent GOP, grants custody to an adult, or the child is adopted. However, the court requires a GOE to be appointed for all minors with income or an estate, including cases where the child lives with parents. Examples of incomes and estates include life insurance proceeds, social security death benefits, or settlements in personal injury cases. Even when both parents are As with GOEs for adults, the GOE for a minor is required to file annual accountings for the minor's assets and income.

Guardians Ad Litem

A GAL is different from the guardians explained above because they can be appointed by the court when minors or people with limited capacity are faced with a lawsuit. GALs are appointed for minors, unborn children whose rights are at issue, and for adults who have a limited ability to meet the challenges of being a party to a lawsuit. An adult's limited abilities are caused by any number of reasons, such as advanced age or illness for example.

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Sincerely,
Amy A. Edwards

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